



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,375	08/02/2006	Aurelio Romeo	5059-0104PUS1	8454
2292 7590 06/02/2011 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
GWARTNEY, ELIZABETH A				
ART UNIT		PAPER NUMBER		
1781				
NOTIFICATION DATE		DELIVERY MODE		
06/02/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

ATTACHMENT TO ADVISORY ACTION

Claims 13, 5-13, 15-33, 35-39 and 41-43 are pending.

It is the Applicant's position that the Examiner should indicate where de la Cuadra states that the insoluble solids in the thin stream are absent. Applicants find that because de la Cuadra disclose that the thin stream is rich in soluble tomato solid, it also contains insoluble tomato solids. Applicants assert that "the novelty of a claim cannot be attacked by interpreting the disclosure of a document, as the Examiner is doing."

The Examiner maintains the position that de la Cuadra et al. disclose a tomato composition wherein the ratio of soluble tomato solids to insoluble tomato solids ranges from 1.0:0.1 to 1.0:1.5. Therefore de la Cuadra et al. disclose a tomato composition comprising from about 40% to about 60% soluble solids and from about 40% to about 60% to insoluble solids. Given there are no other solids in the tomato besides soluble and insoluble and de la Cuadra disclose compositions comprising 82.5 to 89% dry residue or total solids, since de la Cuadra et al. disclose a thin stream comprising mainly soluble solids and about 70% water (i.e. 30° Brix) and a thick stream comprising mainly insoluble solids and about 7% water, the ratio of soluble to insoluble solids remains constant.

Applicants note that de la Cuadra does not disclose or suggest tomato products having improved saucing power or preservation power.

In this case, since de la Cuadra et al. disclose a tomato product and method of making substantially similar to that presently claimed, it necessarily follows that it would display the recited saucing and preservation properties.

Applicants note that besides yielding the tomato products of claim1, the process of preparing the tomato products does not alter the carotenoids.

Note, given de la Cuadra disclose a process substantially similar to that presently claimed, one of ordinary skill in the art would expect that the resulting tomato products display similar carotenoid compositions. Further, there is no evidence in the record indicating that the tomato products of de la Cuadra have altered carotenoid compositions compared to those of the present invention.

With regards to Succar et al., Applicants assert that it is clear that in the process of claim 15 a decanter is not used for the separation nor is a decanter suitable for the separation step. Applicants note that the specification describes that in the inventive method the solid liquid separator is equipped with a stirrer, or the solid liquid separator can rotate at an angular speed of 1-10 rpm. Thus, Applicants argue, the solid-liquid separator of the present invention is not the same as or similar to a decanter.

In this case, Succar et al. teach using a decanter to *separate* tomato juice into two portions (i.e. serum and pulp). Further, while Succar et al. does not teach that the decanter rotates at a speed of from 1 rpm to 20 rpm, Succar et al. teach that the separation can be adjusted by varying the rotation speed of the decanter (p.9/L30-32). Therefore given it was known to adjust separation efficiency by varying the rotation speed of a decanter, one of ordinary skill in the art would have found it obvious to adjust, by routine processing, the rotation speed.

Applicants assert that de la Cuadra et al. and Succar et al. teach away from the process of the present invention because Succar et al. teach that separation efficiency improves by

increasing the temperature and the lower end of the temperature range is more than twice that of the temperature recited in claim 15.

However, note that while Succar et al. does not disclose *all* the features of the present claimed invention, Succar et al. is used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention. *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, namely separating tomato serum and pulp with a decanter and in combination with the primary reference, discloses the presently claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH GWARTNEY whose telephone number is (571)270-3874. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Lawrence Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Lawrence Tarazano/
Supervisory Patent Examiner, Art Unit 1781

/E. G./
Examiner, Art Unit 1781